IN THE

SUPREME COURT OF THE UNITED STATES.

SAMUEL B. DOWNES, DOING BUSINESS UNDER THE FIRM NAME OF S. B. DOWNES & CO., PLAINTIFF IN ERROR,

against

GEORGE R. BIDWELL, DEFENDANT IN ERROR.

MOTION TO ADVANCE NO. 507.

IN THE SUPREME COURT OF THE UNITED STATES.

Motion to advance No. 507.

SAMUEL B. DOWNES, DOING BUSINESS UNDER THE FIRM NAME OF S. B. DOWNES & CO., PLAINTIFF IN ERROR AGAINST GEORGE R. BIDWELL, DEFENDANT IN ERROR.

UNITED STATES OF AMERICA, *ss:*

The plaintiff in error respectfully moves the court to advance the above-entitled cause upon the docket, and set it down for hearing on January 7, 1901 (or such other early day as shall be most convenient to the court and satisfactory to the Attorney-General), on the ground that it raises the same important questions which are presented in other cases which have been set down for argument at the time named (particularly that of *De Lima* v. *Bidwell*, No. 456), involving the legality of the imposition of customs duties at the port of New York on merchandise brought into said port from the island of Porto Rico since the ratification and proclamation of the recent treaty between the Kingdom of Spain and the United States, ceding the said island to the United States.

This cause is a common-law action brought by the plaintiff in error in the circuit court of the United States for the southern district of New York, in the second circuit, to recover back from the defendant, George R. Bidwell, who was and is the collector of customs at the port of New York, a certain sum of money which the complaint alleges "the plaintiff was (by the said defendant) unlawfully and against his will and in spite of his formal protest duly made in writing, compelled to pay and did pay, in order to obtain possession of (certain) oranges, to which he was entitled, but which the defendant, enabled so to do by the power and authority of said office, had detained, was detaining, and threatened to continue to detain from him, exacting as a condition to the delivery thereof such payment of said alleged duties, whereas the said oranges were not liable to duty; the same not having been imported from any foreign country within the meaning of any valid statute or executive order of the United States, but were merchandise which must, under and by virtue of the provisions of the Constitution of the United States in that regard, be admitted to free entry in any port of the United States."

To said complaint the U. S. attorney, as attorney for the defendant, entered a demurrer, upon the following grounds:

"First. That the court has not jurisdiction of the subject of the action.

"Second. That the complaint does not state facts sufficient to constitute a cause of action."

Thereafter, on the 30th day of November, 1900, the said circuit court made and filed a decree sustaining the demurrer upon the ground that the complaint does not state facts sufficient to constitute a cause of action, and dismissing the complaint; judgment to that effect being signed on the 1st day of December, 1900.

To review the said judgment the cause has been brought to this court by writ of error, and is No. 507 on the docket.

New York, December 10, 1900.

F. R. COUDERT,
Attorney for Plaintiff in Error.